REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

IZUMO CONTRACTORS, INC. rep. by CEDRIC LEE, JOHN K. ONG & JUDY GUTIERREZ LEE,
Accused.

CTA CRIM. CASE NOS. O-526, O-527, O-528 & O-529

Members:

CASTAÑEDA, JR., *Chairperson, and*
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 08 2019
9:10 a.m.

x - x

RESOLUTION

For resolution of this Court are the following:

1. plaintiff's **Motion for Reconsideration (*of the Resolution dated July 24, 2018*)**, filed on August 9, 2018;

2. plaintiff's **Amended Motion for Reconsideration (*of the Resolution dated July 24, 2018*)**, filed through registered mail on August 9, 2018, and received by this Court on August 15, 2018, with accused John Ong's **Comment (to the Prosecution's Amended Motion for Reconsideration dated August 9, 2018)**, filed on August 28, 2018, and accused Cedric Lee and Judy Gutierrez Lee's **Comment with Opposition (Amended Motion for Reconsideration *Of the Resolution dated 24 July 2018*)**, filed on August 31, 2018; and

3. accused Cedric Lee and Judy Gutierrez Lee's **Ex-Parte Motion to Release Cash Bond**, filed on August 24, 2018, with plaintiff's **Comment/Opposition (To Ex-Parte Motion to Release Cash Bond)**, filed on September 10, 2018.

Motion for Reconsideration (*of the Resolution dated July 24, 2018*)

Considering the filing of plaintiff's Amended Motion for Reconsideration (*of the Resolution dated July 24, 2018*), the Court will no longer resolve plaintiff's Motion for Reconsideration (*of the Resolution dated July 24, 2018*).

Amended Motion for Reconsideration (*of the Resolution dated July 24, 2018*)

In its Amended Motion for Reconsideration, plaintiff moves for reconsideration of the Resolution dated July 24, 2018 on the ground that the Court erred in not holding accused Izumo Contractors, Inc. civilly liable.

In the assailed Resolution, the Court granted accused Cedric Lee and Judy Gutierrez Lee's Demurrer to the Prosecution's Evidence, and accused John K. Ong's Demurrer to Evidence, and acquitted accused Cedric Lee, Judy Gutierrez Lee and John Ong of the offenses charged for failure of the prosecution to establish guilt beyond reasonable doubt, and without civil liability, to wit:

> "**WHEREFORE**, premises considered, the accused Cedric Lee and Judy Gutierrez Lee's **Demurrer to the Prosecution's Evidence**, and accused John K. Ong's **Demurrer to Evidence** are **GRANTED**.
>
> Accordingly, accused Cedric Lee, Judy Gutierrez Lee and John K. Ong are **ACQUITTED** of the offenses charged for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt, and without civil

liability. Accordingly, the instant consolidated cases are **DISMISSED**.

SO ORDERED."

Plaintiff asks the Court to reconsider the civil liability of accused Izumo Contractors, Inc. which is deemed instituted in the instant case on the rule that the court may acquit an accused on reasonable doubt and still order payment of civil liabilities already proved in the same case without need for a separate civil action.

According to plaintiff, the civil liability of the accused may be proved by mere preponderance of evidence, a much lesser quantum of evidence than proof beyond reasonable doubt required in every criminal proceeding.

Plaintiff alleges that in this case, the BIR, as the tax collecting agent of the government, sued accused for its willful failure to supply correct and accurate information in its income tax returns. In order to prove said violation, plaintiff offered in evidence the testimony of BIR Intelligence Officer Gary V. Atanacio, who testified that his group requested and received from the local chief executives of the City of San Juan, Pasay City, Butuan City, Tagudin, Ilocos Sur, and Davao del Sur documents/certifications as to their respective income payments made to accused.

Plaintiff likewise presented the testimonies of Ms. Dinah A. Lamsen, Ms. Dorothy Joy C. Angeles-Ramos, Ms. Antonietta C. Abella, and Ms. Leilani L. Cabanero, accountants of the local governments of San Juan, Davao Occidental, Butuan City, and Tagudin, Ilocos Sur, respectively; and, Mr. Pedro R. Ignacio, Administrative Assistant V of the City Government of Pasay, to prove that they each had issued certification indicating the income payments made by their respective local government units (LGUs) to accused.

Meanwhile, in order to prove the income tax deficiencies of accused for taxable years 2006, 2007, 2008, and 2009, the percentage of accused's under-declaration of income, and the signatories of accused's ITRs for taxable years 2006, 2007, 2008, and 2009, plaintiff offered the testimony of Revenue Officer Mary Grace Parado-Alonzo.

Moreover, plaintiff contends that Ms. Parado-Alonzo's computation of accused's total tax dues was not denied, much less refuted by accused. It also alleges that plaintiff's witnesses who are employed by different LGUs testified to and identified documents to prove the income payments made to accused during the taxable years in question, which when compared vis-a-vis to the ITRs submitted by accused to the BIR for said taxable years, would establish that accused's actual income were not correctly reflected in its ITRs.

Plaintiff argues that these pieces of evidence taken together would establish by preponderance of evidence the civil liability of accused in relation to its non-declaration of its true and actual income. It avers that the testimonial evidence presented carries superior weight considering that accused did not dispute the same and thus, have weight and credibility.

Furthermore, plaintiff contends that considering there is more than 30% of under-declaration of income as testified to by Ms. Parado-Alonzo, there is *prima facie* evidence of fraud pursuant to Section 248 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Finally, plaintiff argues that there being *prima facie* evidence of fraud, the burden of evidence shifts to accused to prove with clear and convincing evidence that, at the time of the commission of the crime charged, Izumo had either ceased to exist or the officers of the accused had ceased to hold the positions stated in the CIS. It contends that since accused have not yet presented any evidence during trial, they have yet to rebut this presumption.

Accused Ong, in his Comment, argues that the ones civilly liable for Izumo Contractors Inc. deficiency tax obligations, if any, are the other Izumo corporate officers and not him. He contends that there is no valid factual and legal bases to hold him liable for the deficiency tax obligations of Izumo as he was never a corporate officer or employee of Izumo during taxable years 2006 to 2009. Thus, accused Ong prays that the Court deny the Amended Motion for Reconsideration dated August 9, 2018 for being bereft of factual and legal bases in holding him civilly liable for the deficiency corporate tax liabilities of Izumo Contractors, Inc. for taxable years 2006, 2007, 2008 and 2009.

On the other hand, accused Cedric Lee and Judy Gutierrez Lee state that the prosecution was not able to prove that the accused failed to supply correct and accurate information in their AITRs of Izumo Contractors, Inc. for taxable years 2006, 2007, 2008, and 2009. They contend that considering that the documents relied upon by the BIR in ascertaining the undeclared income of Izumo for taxable years 2006, 2007, 2008 and 2009 were not admitted in evidence, the prosecution cannot prove that the accused indeed failed to supply correct and accurate information in the subject AITRs.

Thus, while accused Cedric Lee and Judy Gutierrez Lee agree that civil liability maybe proved only by mere preponderance of evidence, they contend that the prayer of the prosecution to hold the accused civilly liable must be denied, considering that the prosecution was not able to prove its claim for civil liability. They argue that what plaintiff has presented in court during trial and in its formal offer of exhibits are mere photocopies, hence they are deemed to be self-serving and mere scratch of paper as they were not properly identified and authenticated as original.

Lastly, accused Cedric Lee and Judy Gutierrez Lee contends that since the prosecution did not pay the required docket fees for the civil aspect of the case, the Court should not entertain the same and should not take cognizance of it for having no jurisdiction.

Plaintiff's Amended Motion for Reconsideration is bereft of merit.

It is an elementary rule of criminal procedure which states that the extinction of the penal action does not carry with it the extinction of the civil liability where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases.[1] In other words, even if the guilt of the accused has not been satisfactorily established, he is not necessarily exempt from civil liability which may be proved by preponderance of evidence only.

Plaintiff's Amended Motion Reconsideration is centered on the issue whether plaintiff was able to prove accused's civil liability by preponderance of evidence.

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[1] *Emilia Lim vs. Mindanao Wines & Liquor Galleria*, G.R. No. 175851, July 4, 2012.

Preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of evidence or greater weight of the credible evidence. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[2]

In the instant consolidated cases, the accused are charged for violation of Section 255 of the NIRC of 1997, as amended because they allegedly failed to supply correct and accurate information in the AITRs for taxable years 2006 to 2009.

In order to prove the guilt of the accused, the prosecution presented and formally offered testimonial and documentary evidence. However, most of its documentary evidence were denied admission by the Court.

In the assailed Resolution, the Court found that the plaintiff was unable to prove that the accused failed to supply correct and accurate information, at the time or times required by law, or rules and regulations. Moreover, the documents that BIR used to make a determination that Izumo, through the accused, grossly under-declared its income for taxable years 2006 to 2009 were denied admission.

Plaintiff contends that Izumo under-declared its income for the taxable years 2006, 2007, 2008 and 2009. Thus, in order to ascertain the true income of Izumo, the BIR sent access letters[3] to its clients requesting for certification as to income payments they made to Izumo. The BIR then compared the gross income declared by Izumo in its AITRs for taxable years 2006 to 2009 as against the income it received as certified by its clients for the said years.

However, majority of the Certifications of Income Payments, Disbursement Vouchers, Official Receipts and Advice of Debits presented by prosecution to prove income payments made to Izumo by its clients for taxable years 2006 to 2009, were denied for failure to identify and for failure to present the originals for comparison. In fact, only three (3) documents were admitted into evidence, to wit:

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[2] *Tomas P. Tan, Jr. vs. Jose G. Hosana*, G.R. No. 190846, February 3, 2016.
[3] Exhibits "P-8", "P-9", "P-10", "P-11" and "P-12", CTA Crim. Case No. O-526, docket vol. III, pp. 820-824.

1. Certificate of Income payments made to Izumo Contractors Incorporated by the City of San Juan dated 21 March 2014 issued by Alicia E. Cruz-Barazon, City Accountant II;[4]

2. Certificate of Income payments made to Izumo Contractors Incorporated by the Municipal Government of Tagudin, Ilocos Sur dated 31 March 2014 issued by Leilani Vee L. Cabanero, Municipal Accountant;[5] and

3. Certificate of Income payments made to Izumo Contractors Incorporated by the Provincial Government of Davao del Sur.[6]

Moreover, the Annual Income Tax Return of Izumo for taxable years 2006 to 2009 that were presented and offered by prosecution were also denied admission based on the best evidence rule found in Section 320 Rule 130 of the Revised Rules of Court.

Considering that the documents that BIR used to make a determination that Izumo, through the accused, grossly under-declared its income for taxable years 2006 to 2009, were denied admission, the prosecution cannot prove that the accused failed to supply correct and accurate information in the AITRs for taxable years 2006 to 2009.

Moreover, there is no merit to plaintiff's assertion that the testimonial evidence it presented, taken together, would establish by preponderance of evidence the civil liability of accused in relation to its non-declaration of its true and actual income. The testimonial evidence presented by the prosecution is insufficient to prove the contents of Izumo's Annual Income Tax Return for taxable years 2006 to 2009; nor are they sufficient to prove the income payments made to Izumo by its clients for taxable years 2006 to 2009. Thus, the said testimonial evidence are not sufficient to prove Izumo's tax liabilities.

Furthermore, the Court is not convinced by plaintiff's contention that the testimonial evidence it presented carries superior weight

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[4] Exhibit "P-13".
[5] Exhibit "P-17".
[6] Exhibit "P-34".

considering that accused did not dispute the same and thus, have weight and credibility.

Settled is the principle that parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.[7]

As a final note, it must be emphasized that the failure of the State to collect any civil liability from Izumo Contractors, Inc, if any, was due to the shortcomings of the public prosecutors in failing to secure, at the very least, certified true copies of the Annual Income Tax Returns of Izumo for taxable years 2006 to 2009 from the BIR. They should have performed and discharged their duties with the highest degree of excellence, professionalism, intelligence and skill.

In view of the foregoing, plaintiff's Amended Motion for Reconsideration must be denied for lack of merit.

Ex-Parte Motion to Release Cash Bond

Accused Cedric Lee and Judy Gutierrez Lee contends that in view of the acquittal of all the accused in the Resolution dated July 24, 2018, it is only proper that their cash bonds in the amount of ₱140,000.00 be released to them.

The plaintiff opposes the release of the cash bond of the accused on the ground that the Resolution dated July 24, 2018 has not yet attained finality considering the filing of its Amended Motion for Reconsideration.

Moreover, plaintiff manifests that it will exhaust all legal remedies to have the Resolution dated July 24, 2018 reversed. Thus, plaintiff contends that until the exhaustion of legal remedies is made, the Motion to Release Cash Bond of Accused should be denied.

The release of the cash bond is proper in this case.

Section 22, Rule 114 of the Rules of Court provides:

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[7] *Emilia Lim vs. Mindanao Wines & Liquor Galleria*, G.R. No. 175851, July 4, 2012.

> "Section 22. *Cancellation of bail.* – Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.
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> **The bail shall be deemed automatically cancelled upon acquittal of the accused**, dismissal of the case, or execution of the judgment of conviction.
>
> In all instances, the cancellation shall be without prejudice to any liability on the bail." (*Emphasis ours*)

From this provision, it is clear that the cancellation of bail is automatic upon the acquittal of the accused.

Moreover, in the case of *People of the Philippines and AAA vs. Court of Appeals, et al.*[8], the Supreme Court held that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated.

Considering that accused Cedric Lee and Judy Gutierrez Lee were acquitted of the charges against them, the release of their cash bond in this case is proper.

WHEREFORE, premises considered, the plaintiff's **Amended Motion for Reconsideration (*of the Resolution dated July 24, 2018*)** is **DENIED** for lack of merit.

Meanwhile, accused Cedric Lee and Judy Gutierrez Lee's **Ex-Parte Motion to Release Cash Bond** is **GRANTED**. Accordingly, accused Cedric Lee and Judy Gutierrez Lee's cash bonds respectively posted in CTA Criminal Case Nos. O-526, O-527, O-528 and O-529 with Official Receipt Nos. 4113928, 4113924, 4113929, 4113925, 4113930, 4113931, 4113927 and 4113926 are ordered **RELEASED**, subject to the presentation of the original official receipts and subject further to the established accounting rules and regulations

SO ORDERED.

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[8] G.R. No. 183652, February 25, 2015.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice